

TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

January 26, 2015

Council Chambers

Kittery Town Council
Regular Meeting
7:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – 1/12/15
8. Interviews for the Board of Appeals and Planning Board
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.

(010315-1) The Kittery Town Council moves to discuss and give guidance to the Finance Director regarding the Fire Truck Transfer repayments.

10. PUBLIC HEARINGS

a. (010315-2) The Kittery Town Council moves to hold a public hearing on an application from Shri Ganesh, Inc., 841 Main Street, Reading, MA for a Victualer's License for Kittery Food Mart, 2 Shapleigh Road.

b. (010315-3) The Kittery Town Council moves to hold a public hearing and act on proposed amendments to Title 16, Chapter 16.9 of the Kittery Town Code as recommended by the Planning Board.

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

(120114-1) The Kittery Town Council moves to ordain proposed amendments to Title 16, Chapters 16.10, 16.2, 16.3, 16.7, and 16.8 of the Kittery Town Code as recommended by the Planning Board.

13. NEW BUSINESS

a. Donations/gifts received for Council disposition

b. (010315-4) The Kittery Town Council moves to receive and discuss the Kittery Port Authority's Self-Assessment report.

c. (010315-5) The Kittery Town Council moves to approve the disbursement warrants.

d. (010315-6) The Kittery Town Council moves to schedule a hearing in accordance with M.R.S. Title 17 §2851 Dangerous Buildings, to consider the condition of the building located at 40 Old Post Road, Map 8 Lot 25 and to take any appropriate action.

e. (010315-7) The Kittery Town Council moves to re-appoint Maryann Place as the Registrar of Voters until 12/31/16.

14. COUNCILOR ISSUES OR COMMENT

15. COMMITTEE AND OTHER REPORTS

a. Communications from the Chairperson

b. Committee Reports

16. EXECUTIVE SESSION:

17. ADJOURNMENT

Posted: January 22, 2015

UNAPPROVED MINUTES

KITTERY TOWN COUNCIL

January 12, 2015

COUNCIL CHAMBERS

1. Call to Order

Chairperson Thomson called the meeting to order at 7:00 P.M.

2. Introductory

Chairperson Thomson read the introductory.

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll were Chairperson Jeffrey Thomson, Councilors Russell White, Frank Dennett, Chuck Denault, Jeffrey Pelletier and Ken Lemont.

5. Agenda Amendment and Adoption –

Chairperson Thomson asked that Item 13G be discussed under Item 9. Councilor Lemont asked to add Item 13I to accept the resignation from Vern Gardner from the Board of Appeals and Comprehensive Plan Committee.

6. Town Manager's Report –

Town Manager Puff indicated that she has been in touch with Senator Hill's office relative to submittal of bills.

Town Manager Puff noted that on January 6th, they had opened the bids for the sewer expansion project and had received three bids back. She continued that even the lowest bid was over what they had projected and they were about \$300,000 off pace. Town Manager Puff stated they would be talking with the bidders to better understand their costs.

Town Manager Puff indicated that she had officially offered the CEO position to Bob Markey.

Town Manager Puff stated that she had notified Eliot that their dispatch services would be going up to \$80,000.

Town Manager Puff noted that MMA was going to be holding a customer service training at the KCC on January 29th. She continued that some offices may be closed that day as employees who interacted with the public would be attending the training.

UNAPPROVED MINUTES

30 Town Manager Puff indicated that she had received 3 responses to their RFP for
31 assessing services.

32 Town Manager Puff indicated that she had appointed Ann Grinnell and George Dow to
33 the Appointment Review Committee, who would be holding their first meeting on January 20th.

34 Town Manager Puff stated that they had held the kickoff meeting for the master field
35 plan that day. She continued they had scheduled public meetings in the Star Theater on February
36 10th, March 4th, and April 8th.

37 Town Manager Puff thanked Meredith Carney-Clark for her 17 years of service to the
38 town as the utility billing bookkeeper and assistant tax collector. She continued they were
39 looking to fill her position.

40 Town Manager Puff stated that Sgt. Trueaux who had retired from the Police Department
41 after 12 years. She continued they were also looking to fill his position.

42 Town Manager Puff noted that Councilor Denault had asked at the last meeting about the
43 hiring and procurement process of projects throughout town. Town Manager Puff then explained
44 the rules according to the Charter and Code and stated that she always kept the Town's best
45 interest in mind when making decisions.

46 Town Manager Puff indicated that she had appointed Jessa Kellogg as the Shoreland
47 Resource Officer.

48 Town Manager Puff noted on March 19th they were offering sensitivity training to boards
49 and committees.

50 7. Acceptance of Previous Minutes –12/8/14, 12/22/14 & 1/5/15

51 The minutes of 12/8/14, 12/22/14 were accepted as amended. The minutes of 1/5/15
52 were accepted as presented.

53 8. Interviews for the Board of Appeals and Planning Board – None

54 9. All items involving the town attorney, town engineers, town employees or other town
55 consultants or requested officials –

56 g. (010215-7) The Kittery Town Council moves to discuss the dilapidated building and
57 property at 40 Old Post Road, Map 8, Lot 25.

58 Councilor Denault indicated that this item had come from him because he did not think
59 that Council was moving fast enough on the dilapidated and dangerous buildings in town. He

UNAPPROVED MINUTES

60 continued that there were laws that would allow Council to take action and that Council needed
61 to be more proactive.

62 Attorney MacEachern came to the podium and stated relative to the Old Post Road
63 properties, that there were actually three parcels. He continued that 42 and 44 Old Post had been
64 in litigation since 1985. Attorney MacEachern indicated that the property at 40 Old Post was a
65 building that he would deem to be dangerous. He continued that the best and most efficient way
66 to proceed, would be to try to get the court orders to apply to that property as well. Councilor
67 Denault asked what the time frame would be. Attorney MacEachern stated that he would urge
68 those involved to move forward as quickly as possible. Councilor Denault asked about the
69 Sowerby property on Route 1. Attorney MacEachern responded that matter was in Council's
70 hands.

71 10. PUBLIC HEARINGS - None

72 11. Discussion

73 a. Discussion by members of the public –

74 Tess Holom Schneier came to the podium and stated relative to the Old Post Road
75 properties, that she felt they were a safety and health hazard. She continued that the legal
76 process did not seem to be succeeding and thought it was time for the town to take action and
77 take down the building.

78 Roger Cole came to the podium and indicated relative to the Bowen Road issue, that the
79 Conservation Commission had done some very good research but that he thought it should have
80 been done by the Code office. He continued that in the future, he thought that requests for
81 changes should have to go through different committees or departments to discuss the proposals
82 and create a flow of communication.

83 Earleen Wells, Chair of the Conservation Commission, came to the podium and stated
84 that DEP set the minimum standards for setbacks but allows for towns to be more restrictive.
85 She continued in this case the person did not get a permit from DEP or the town. Ms. Wells
86 noted that the Commission was requesting a Notice of Violation be issued against the Clainoses.

87 Bill Grenier came to the podium and indicated that he was the person who originally
88 spoke with DPW and that Mr. Clainos was only trying to create a safe environment by putting
89 the stairs in.

90 Page Mead came to the podium and stated that the Open Space Committee had asked the
91 state if they could construct wooden stairs at the bottom portion and they had said no.

UNAPPROVED MINUTES

George Dow came to the podium and stated relative to the Old Post Road properties that he thought it was time for Council to take action. He stated that maybe the Town could take a lien out against the property if they had to pay to take it down.

Nick Clainos came to the podium and stated that he had spent weeks working with DEP in Augusta designing the steps. He continued it was his opinion that this issue was considered an exception and no permit was necessary.

Cynthia Clainos came to the podium and indicated that she had fallen at the parcel in question in July. She continued that they had thought that the improvements would make the parcel safer and that there were two abutters who did not want the public to be able to access the parcel. Ms. Clainos stated that she hoped that Council would vote in favor of the proposed plan.

Donna Jean Higgins came to the podium and stated that no citizen was allowed to make any changes to town owned pieces of land.

Megan Kline came to the podium and stated that she was a member of the Open Space Committee and noted that she thought that Council should refer the issue back to the Committee to make a decision.

b. Response to public comment directed at a particular Councilor – None

c. Chairperson's response to public comments –

Chairperson Thomson stated relative to the property on Old Post Road, that the situation was frustrating and needed a resolution. He noted that he was looking forward to hearing from Attorney MacEachern on the next step. Chairperson Thomson stated that the parking of the vehicles in front of the building needed to be addressed as that was town property and it was blocking people's ability to park by the pond.

Chairperson Thomson noted relative to the Bowen Road issue, that Council was going to try to address it that evening and appreciated hearing everyone's opinions.

12. UNFINISHED BUSINESS –

a. (110314-1) The Kittery Town Council moves to discuss the installation of steps on the town's ROW on Bowen Road.

Councilor Dennett stated that he thought that all parties were wrong. He continued that only the CEO, Town Planner and Town Manager should have an opinion on the matter. Councilor Dennett remarked that Council had no say in the matter and that the final decision would come from the CEO. Chairperson Thomson stated that the Manager had the authority to accept the plan she was presented and to execute a consent agreement. Town Manager Puff noted that she had spoken to many people about the issue. She continued that she brought the

UNAPPROVED MINUTES

125 issue in front of Council because she thought it was important to have a public discussion on the
126 matter.

127 13. NEW BUSINESS

128 a. Donations/gifts received for Council disposition -

129 (010215-1) The Kittery Town Council moves to accept a donation from York Hospital in
130 the amount of \$9,250 for scholarships and be deposited in account #5003-43600.

131 **COUNCILOR PELLETIER MOVED TO ACCEPT A DONATION FROM YORK**
132 **HOSPITAL IN THE AMOUNT OF \$9,250 FOR SCHOLARSHIPS AND BE DEPOSITED**
133 **IN ACCOUNT #5003-43600, SECONDED BY COUNCILOR WHITE.**

134 **A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES**
135 **6/0.**

136 b. (010215-2) The Kittery Town Council moves to approve a request from Traip
137 Academy Project Graduation to hold a Hockey Shoot-off on Legion Pond on Sunday, February
138 15, 2015, from noon to 3:00 P.M., with a back-up date of Sunday, February 22nd.

139 **COUNCILOR PELLETIER MOVED TO RECOGNIZE THAT TRAI**
140 **ACADEMY PROJECT GRADUATION WOULD BE HOLDING A HOCKE SHOOT-OF**
141 **ON LEGION POND ON SUNDAY, FEBRUARY 15, 2015 FROM NOON TO 3:00 P.M.**
142 **WITH A BACK UP DATE OF SUNDAY, FEBRUARY 22ND, SECONDED BY**
143 **COUNCILOR WHITE.**

144 **A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES**
145 **6/0.**

146 c. (010215-3) The Kittery Town Council moves to approve the disbursement warrants.

147 **COUNCILOR DENNETT MOVED TO APPROVE THE DISBURSEMENT**
148 **WARRANTS, SECONDED BY COUNCILOR PELLETIER, WITH ALL IN FAVOR.**
149 **MOTION PASSES 6/0.**

150 d. (010215-4) The Kittery Town Council moves to approve a renewal application from
151 Weathervane Seafoods, 31 Badger's Island West for a Malt, Spirituous and Vinous Liquor
152 License for Weathervane Seafoods, 306 US Route 1.

153 **COUNCILOR PELLETIER MOVED TO APPROVE A RENEWAL**
154 **APPLICATION FROM WEATHERVANE SEAFOODS, 31 BADGER'S ISLAND WEST**
155 **FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR**

UNAPPROVED MINUTES

156 WEATHERVANE SEAFOODS, 306 US ROUTE 1, SECONDED BY COUNCILOR
157 WHITE.

158 A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES
159 6/0.

160 e. (010215-5) The Kittery Town Council moves to ratify and sign a three year labor
161 contract from July 1, 2014 thru June 30, 2016 for the Public Works unit.

162 COUNCILOR PELLETIER MOVED TO RATIFY AND SIGN A THREE YEAR
163 LABOR CONTRACT FROM JULY 1, 2014 THRU JUNE 30, 2016 FOR THE PUBLIC
164 WORKS UNIT, SECONDED BY COUNCILOR DENAULT.

165 A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT
166 OPPOSED. MOTION PASSES 5/1.

167 f. (010215-6) The Kittery Town Council moves to appoint Tom Emerson to the
168 Economic Development Committee as a Voting Business member until 12/31/15 (replacing Ann
169 Grinnell).

170 COUNCILOR PELLETIER MOVED TO APPOINT TOM EMERSON TO THE
171 ECONOMIC DEVELOPMENT COMMITTEE, WITHOUT THE BENEFIT OF AN
172 INTERVIEW, AS A VOTING BUSINESS MEMBER UNTIL 12/31/15 (REPLACING
173 ANN GRINNELL), SECONDED BY COUNCILOR DENAULT.

174 A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES
175 6/0.

176 h. (010215-8) The Kittery Town Council moves to appoint a representative to meet with
177 the Chair of the Port Authority to interview Bruce Crawford for his appointment until 8/31/19
178 (replacing Barry Bush).

179 COUNCILOR DENNETT MOVED TO APPOINT CHAIRPERSON THOMSON
180 TO MEET WITH THE CHAIR OFF THE PORT AUTHORITY TO INTERVIEW
181 BRUCE CRAWFORD FOR HIS APPOINTMENT UNTIL 8/31/19 (REPLACING BARRY
182 BUSH), SECONDED BY COUNCILOR PELLETIER, WITH ALL IN FAVOR.
183 MOTION PASSES 6/0.

184 i. The Kittery Town Council moves to accept the resignation of Vern Gardner from the
185 Board of Appeals and Comprehensive Plan Committee.

186 COUNCILOR DENAULT MOVED TO ACCEPT THE RESIGNATION OF VERN
187 GARDNER FROM THE BOARD OF APPEALS AND COMPREHENSIVE PLAN
188 COMMITTEE, SECONDED BY COUNCILOR WHITE.

UNAPPROVED MINUTES

189 **A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES**
190 **6/0.**

191 14. COUNCILOR ISSUE OR COMMENT

192 Councilor Lemont stated they had held a workshop with the Library Board of Trustees to
193 discuss their future plans but did not think that a sub-committee had ever been put together.
194 Town Manager Puff indicated that she would volunteer to be the middle man to come up with a
195 plan to move forward.

196 Councilor White asked that if the DPW is requested to do anything in the future that they
197 are not totally comfortable doing, that they contact another department to communicate that
198 request and to create a record.

199 Councilor Denault stated relative to his questions about hiring and procurements, that he
200 thought some of the ambiguity of the rules could create a conflict and it had nothing to do with
201 the Town Manager awarding bids. He continued that maybe Council should review the
202 procedures in the future.

203 Councilor Denault indicated that he had met with Seacoast Helicopters who had ensured
204 him that they did not want to create any problems and presented their flight plan which was not
205 going to go directly over Kittery.

206 15. COMMITTEE AND OTHER REPORTS

207 a. Communications from the Chairperson

208 Chairperson Thomson stated that there was going to be a lecture on the visual history of
209 the early 1900's of Kittery at the Star Theater on January 14th.

210 Chairperson Thomson indicated they would be holding a workshop with the Town
211 Manager and CIP Committee on 2/2 at 6 P.M.

212 Chairperson Thomson noted they would be holding a workshop relative to the
213 information gathered at the Foreside forums at 2/2 at 7:15 P.M.

214 Chairperson Thomson noted that following Monday was a holiday and the Town Hall
215 would be closed.

216 b. Committee Reports – None

217 16. EXECUTIVE SESSION – None

218 17. ADJOURNMENT

UNAPPROVED MINUTES

219 **COUNCILOR PELLETIER MOVED TO ADJOURN, SECONDED BY**
220 **COUNCILOR WHITE WITH ALL IN FAVOR. MEETING ADJOURNED AT 8:57 P.M.**

221

222



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: January 12, 2015
From: Cindy L. Saklad, Finance Director
Subject: Fire Truck Transfer - Repayments

EXECUTIVE SUMMARY

The Fire Chief has questioned why the Fire Truck Reserve is making annual repayments to the Public Safety Impact Fee Account for the purchase of the Fire Truck. While researching this issue the Finance Director discovered other discrepancies in the Fire Truck Repayment schedule and needs guidance from the Council on resolving both issues.

BACKGROUND

At its March 29, 2010 meeting, Council voted to purchase a Fire Truck utilizing \$140,000 from the Fire Truck Reserve and Public Safety Impact Fee Accounts and borrowing \$516,440 from current designated funds. Repayment to the designated funds was to be reimbursed out of the annual Fire Department Reserve Appropriations. A copy of the motion is attached.

A Council approved motion on July 23, 2012 closed three (3) of designated accounts the Fire Truck Reserve was scheduled to re-pay. A copy of motion is attached.

FACTS BEARING ON THE EQUATION

The seven (7) year Fire Truck repayment schedule does not follow the motion. Specifically,

(1) The Fire Truck Reserve account contributed \$122,002, Public Safety Impact fees contributed \$20,992 and \$513,446 was borrowed from designated funds.

(2) The schedule includes repayments for Public Safety Impact Fees when none were required. To date the account has been repaid \$12,412 of the \$20,992 included as borrowed. A copy of the schedule, with explanations, is attached.

In its motion on July 23, 2012, Council closed three (3) of the designated accounts receiving repayments. Repayments totaling \$159,179.52 over the seven year term to the designated accounts closed was suspended.

(3) Two Capital Project Funds, Traffic Light Rte 236 MRTN (4039) and Pepperrell Road Drainage (4045) are over spent for a total of \$119,855.95.

CURRENT SITUATION

The Fire Truck Reserve account repaid a total of \$12,412.04 to the Public Safety Impact Fee account for the fiscal years FY11 through FY14. Payment for FY15 has not been made pending Council guidance.

Repayments to closed designated accounts totaling \$159,179.52 for the remaining 5 years of the payment schedule were suspended because the accounts were closed by a Council motion.

PROPOSED SOLUTION/RECOMMENDATION

The Finance Director proposes:

- (1) Transfer funds in the amount of \$12,412.04 from the Public Safety Impact Fees account 4030 to the Fire Truck Reserve account 4013;
- (2) Transfer funds in the amount of \$14,491.23 from the Fire Truck Reserve account 4013 to the Pepperrell Road Drainage account 4045 as repayment for a portion of the payments suspended. See Facts Bearing on the Equation section of this document;
- (3) Transfer funds in the amount of \$35,121.47 in FY 2015, FY 2016 and FY2017 from the Fire Truck Reserve account 4013 to the Traffic Light Rte 236 MRTN account 4039. See Facts Bearing on the Equation section of this document;
- (4) Transfer funds in the remaining balance of \$19,661.84 in FY2016 and \$19,661.83 in FY2017 from the Fire Truck Reserve account 4013 to the Compensated Absences account 2022 to re-pay the remaining amount borrowed. See Facts Bearing on the Equation Section of this document.

RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

The transfer from the Public Safety Impact Fees account to the Fire Truck Reserve will correct the error in the repayment schedule. There is no cost associated with this solution.

The transfer from the Fire Truck Reserve account to the Pepperrell Road Drainage account will avoid the necessity of funding the shortfall in that account by CIP funds or an appropriation from Undesignated Surplus. There is no cost associated with this solution.

The transfer of three (3) annual payments from the Fire Truck Reserve account to the Traffic Light Rt 236 MRTN account will avoid the necessity of funding the shortfall in that account by CIP funds or an appropriation from Undesignated Surplus. There is no cost to this solution.

The transfer of the remaining amount of \$39,323.67 will supplement the balance of funds in the Compensated Absences account for future use.

APPROVED MINUTES
MARCH 29, 2010
KITTERY TOWN COUNCIL
SPECIAL MEETING

March 29, 2010
6:00 P.M.

Council Chambers

1. CALL TO ORDER

Chairperson Judith Spiller called the meeting to order at 6:00 p.m.

2. INTRODUCTORY

Chairperson Spiller read the Introductory.

3. PLEDGE OF ALLEGIANCE

The Chair led those present in the Pledge of Allegiance.

4. ROLL CALL

Answering the roll were Chairperson Judith Spiller, Vice Chair George Dow, Councilors Gary Beers, Frank Dennett, Jeffrey Thomson, Jeffrey Pelletier and Jeffery Brake. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Recorder Ashley Rodier, members of the press and others.

5. PUBLIC HEARING

a. (030310-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN ORDINANCE AUTHORIZING THE TOWN OF KITTERY TO LEASE PURCHASE A FIRE TRUCK.*

Chairperson Spiller noted that notice of this hearing was advertised in the Portsmouth Herald on March 19, 2010. Chairperson Spiller stated that the Fire Department currently had a 1983 pumper that needed in excess of \$30,000.00 in repairs and Chief O'Brien had proposed that the town purchase a pumper and ladder truck combination and if they moved quickly they would be able to buy a demonstration model with a full warranty. She continued it was a question of if the town should buy the truck now and save the money on repairs to the old pumper truck or should they wait and purchase a new truck in a couple of years. Chairperson Spiller indicated that this consideration was recommended by the Capital Improvement Committee. Town Manager Carter stated this had been reviewed by the town's bond counsel and it would utilize \$140,000.00 from the fire truck reserve account which was made up of \$122,000.00 from the reserve and from the public safety impact fee with the balance to make a \$140,000.00 deposit with the balance to be on a lease purchase arrangement with Ocean National Bank at 3.75% over 7 years. Chief O'Brien stated that the proposal had the blessing of the town manager and the CIP Committee. He continued that Engine 2, the 1983 pumper, was in need of replacement for a

APPROVED MINUTES
MARCH 29, 2010

not see spending in excess of \$30,000.00 to fix the pumper truck. Councilor Dennett asked if the proposed question on the ballot would be to allow Council to make agreements whether it was to lease purchase or take the money out of a surplus and asked how much leeway Councilor Thomson would expect to be involved in the question. Councilor Thomson responded that it was his thought was if his motion prevailed that later that evening or at a subsequent workshop they would make that decision.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT, COUNCILOR BRAKE, COUNCILOR DOW, COUNCILOR BRAKE, COUNCILOR PELLETIER AND CHAIRPERSON SPILLER OPPOSED. MOTION FAILS 1/6.

COUNCILOR BEERS MOVED THAT THE TOWN OF KITTEERY PURCHASE A 2008 PIERCE QUINT FIRE APPARATUS WITH ARROW XT CHASSIS, 75' HEAVY DUTY ALUMINUM LADDER WITH PIERCE ULTIMATE CONFIGURATION UTILIZING THE \$140,000.00 DESIGNATED RESERVE FUNDS HELD BY THE FIRE DEPARTMENT AND CURRENT DESIGNATED FUNDS IN THE AMOUNT OF \$516,440.00 TO BE REIMBURSED OUT OF ANNUAL FIRE DEPARTMENT DESIGNATED RESERVE APPROPRIATIONS IN THE FUTURE, SECONDED BY CHAIRPERSON SPILLER.

Councilor Thomson asked Town Manager Carter asked what implications it would have on the departments that had the reserve accounts currently. Town Manager Carter responded that presently there was just under \$5,000,000.00 and it would not be detrimental. Town Manager Carter noted that it would preclude the town from being able to invest for a length of time and now that the interest rates were low it did not matter because they were not making much. Town Manager Carter stated that if they went with purchasing outright it would save about \$90,000.00 in interest from the lease purchase agreement.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DOW OPPOSED. MOTION PASSES 6/1.

6. Discussion by the public (three minutes per person)

There was none.

7. ADJOURNMENT

COUNCILOR PELLETIER MADE A MOTION TO ADJOURN, SECONDED BY DOW, WITH ALL IN FAVOR.

MEETING ADJOURNED: 7:03 P.M.

APPROVED MINUTES

7-23-12

2.07(3), 2.14 AND 6.10, HEREBY ORDAIN AN ORDINANCE BASED UPON A WRITTEN REQUEST BY THE TOWN MANAGER TO RECONCILE VARIOUS CAPITAL PROGRAMS AND SPECIAL REVENUE DEDICATED RESERVE ACCOUNTS IN ACCORDANCE WITH TOWN CHARTER SECTION 6.09(4), AS PRESENTED, AND TRANSFER REMAINING FUNDS IN THE AMOUNT OF \$124,961 TO THE SPECIAL RESERVE ACCOUNT #750, COMPENSATED ABSENCES, SECONDED BY COUNCILOR PELLETIER.

Town Manager Markel went through all of the accounts that were going to be closed, transferred, consolidated, renamed or opened.

COUNCILOR BEERS MOVED TO AMEND THE MAIN MOTION TO ADD AFTER THE WORDS AS PRESENTED, CAPITAL PROJECTS AND SPECIAL REVENUE ACCOUNT S #304, 305, 614, 621, 622, 627, 630, 714, 724, 725, 726, 730, 742, 749, 770, 812, 818, 275, 612, 615, 640, 645, 712, 743, 744, 745, 747, 748, 752, 753, 754, 757, 759, 763, 765, 771, 775, 776, 777, 782, 791, 798 BE CLOSED AND ALL RESIDUAL FUNDS TO BE TRANSFERRED TO ACCOUNT #750, COMPENSATED BALANCES, SECONDED BY COUNCILOR THOMSON.

A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 5/0.

A ROLL CALL WAS TAKEN ON THE MAIN MOTION WITH ALL IN FAVOR. MOTION PASSES 5/0.

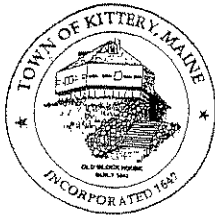
COUNCILOR BEERS MOVED TO TRANSFER FUNDS FROM ACCOUNT #750, COMPENSATED BALANCES, TO OFFSET DEFICITS AND THEN CLOSE THE FOLLOWING ACCOUNTS: #720, 721, 722, 728, 746, 762, 772, 774, 780, 799 WITH TRANSFERS TOTALING \$41,832 AND TO TRANSFER FUNDS FROM ACCOUNT #750, COMPENSATED BALANCES TO OFFSET DEFICITS IN THE AMOUNT OF \$23,051 IN ACCOUNTS #740 AND 795 WHICH WILL REMAIN OPEN; AND TO TRANSFER SPECIAL REVENUE ACCOUNTS #761, 790 AND 794 TO CAPITAL PROJECTS AND TRANSFER CAPITAL PROJECTS ACCOUNTS #618 AND 723 TO SPECIAL REVENUE, AND TO TRANSFER CAPITAL PROJECTS ACCOUNT #792 TO PERMANENT FUNDS; AND TO CONSOLIDATE ACCOUNT #742 INTO ACCOUNT #617; AND TO RENAME ACCOUNTS #306, 313, 613, 729, 604 AND 611 AS RECOMMENDED BY THE TOWN MANAGER; AND TO CREATE A NEW ACCOUNT #820 FOR THE BIG PROJECT GRANT MATCH ACCOUNT, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 5/0.

[illegible]

Fire Truck Repmt Proposal

Repayments Scheduled for:	#	Object	FY 10	FY 16	FY 17	Balance Due
Fire Station/Rec Field	4004	43580	4,219.84			4,219.84
Remove Architect Barriers	4028	43580	84,523.48			84,523.48
Traffic Light Rt 236 MCN	4038	43580	70,436.20			70,436.20
Total Scheduled Payments			159,179.52			159,179.52
Schedule for repayment of:						
Compensated Absences	2022	43580		(19,661.84)	(19,661.83)	(39,323.67)
Traffic Light Rt 236 MRTN	4039	43580	(35,121.47)	(35,121.57)	(35,121.58)	(105,364.62)
Pepperrell Road Drainage	4045	43580	(14,491.23)			(14,491.23)
Total Repayments			109,566.82			(159,179.52)



1/26

TOWN OF KITTERY
Office of the Town Clerk
200 Rogers Road, Kittery, Maine 03904
Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR VICTUALERS, INNKEEPERS,
AND LODGING HOUSE OPERATORS LICENSE

Applicant's name: Shri Ganesh INC
(please print)

Residence Address: 841 MAIN ST. READING MA - 01867.
(please print)

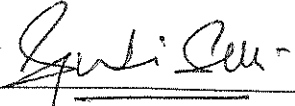
Applicant's mailing address if different from above: _____

Applicant's Date of Birth: 03/04/1963 Applicant's Home Telephone Number: 781-244-4304

Name of Business: KITTERY FOOD MART.
(please print)

Business Address: 2 SHAPLEIGH RD KITTERY ME - 03904.
(please print)

Business Telephone Number: (207) 439-0666

SIGNATURE OF APPLICANT:  DATE: 12/23/14

APPLICANT'S NAME: SUDHIR SETHI.
(please print)

LICENSE FEE: \$ 50.00

FIRST TIME APPLICATIONS: \$50.00
RENEWAL OF LICENSE: \$25.00

PLEASE SUBMIT THIS FORM WITH THE APPROPRIATE FEE TO THE TOWN CLERK'S OFFICE



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: January 26, 2015
From: Ann Grinnell, Planning Board Chair & Chris Di Matteo, Town Planner
Subject: Town Code amendments to Title 16, Land Use & Development Code
Councilor Sponsor: Jeffrey Thomson, Chair

EXECUTIVE SUMMARY

The following sections of Title 16 require code amendments in order to provide greater clarity, remove outdated references and update provisions to allow for more conformance with the Town's Comprehensive Plan:

ITEM 1

- **16.10.9.1.4 Approve Plan Expiration.** Changes provide clarity as to the conditions by which a plan's approval expires, and decreases the number of years an approved subdivision plan may be extended, from ten to five years.
- **16.10.9.1.5 Requests for Extension.** Deleted as necessitated by item (1) above.
- **16.9.3.8 Expiration of Wetlands Alteration Approval.** Changes provide clarity in the same respect as with 16.10.9.1.4 above.

Note: The Planning Board recently held a public hearing for these amendments on January 8, 2015, noticed in the Portsmouth Herald Newspaper Friday 12/26 and Wednesday 12/31.

ITEM 2

- **16.3.17; 16.7.3; 16.8.28** {Maine DEP 1999 and 2010 Conditional Approval of Kittery Shoreland Zoning Amendments}. Changes are required to conform to MDEP conditional approvals that were never adopted.
- **16.7.3.5.10 Adjustment of Common Boundary Line of Non-Conforming Lots** {Thron/Arris Zoning Amendment Application}. Changes provide limited flexibility, currently not permissible, to allow property owners to adjust common property lines of nonconforming parcels.

Note: The Town Council and the Planning Board held a joint workshop on January 5, 2015 and the following questions/concerns were raised:

1. Formatting issues, i.e. 'shall' vs. 'must'.
2. Questions regarding referencing Commercial Fisheries/Maritime Use Overlay Zone in 16.7.3.5.8.C regarding the change of a nonconforming use to another nonconforming use; the use of "single or joint" rather than "common"; and the term *exclusively* as it is used in the state's definition for dwelling unit. The latter was raised earlier than the 1/5 meeting, however, all have been discussed with the MDEP. See attached 1/21/15 email from Michael Morse, Assistant Shoreland Zoning Coordinator.

See attached memorandums for more details on the specific amendments.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: January 26, 2015	Title: Approved Plan Expiration and Expiration of Wetlands Alteration Approval
Town code section: Title 16, §16.10.9.1.4, 16.10.9.1.5 and 16.9.3.8	History: amended proposal

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

To provide clarity as to when and under what conditions an approved plan expires and the ability to obtain an extension.

SUMMARY OF PROPOSAL/AMENDMENT:

1. The existing code language is ambiguous as to how to apply the conditions necessary to determine if a plan's approval is expired. The proposal separates the conditional clauses with two sentences.
2. The proposal deletes 16.10.9.1.5 *Requests for Extension* as it provides unnecessary redundancy with 16.10.9.1.4 *Approved Plan Expiration*, which now addresses extensions.
3. Clarity is provided as to what happens if a plan approval does expire.
4. The total length of time an approved subdivision plan may be extended is reduced from 10 years to 5 years.

JUSTIFICATION:

The proposal removes ambiguity making clearer to applicants the expectations for completion of approved development plans, simplifying administration of the Code by staff and the Planning Board.

FISCAL IMPACT:

None

CODE AMENDMENT

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article IX. Post Approval

16.10.9.1 Post Approval Actions Required.

16.10.9.1.4 Approved Plan Expiration.

A. ~~A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one (1) year from Planning Board date of approval, or Where work has commenced within one (1) year of such approval, is not substantially the approval will expire unless work is complete within three (3) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.~~

B. ~~A non-subdivision For all other development plans, plan's approval by the Planning Board approval will expire if work on the development is has not commenced within one (1) year from date of Planning Board approval, or Where work has commenced within one year of such approval, the approval will expire if work is not substantially complete within two (2) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.~~

C. Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

D. When a plan's approval expires the applicant may re-apply subject to the Town Code current at the time of re-application.

~~16.10.9.1.5 Requests for Extension.~~

~~The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis. {Modified and moved to C. above}~~

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT

Article III. Conservation of Wetlands Including Vernal Pools

16.9.3.8 Expiration of Wetlands Alteration Approval.

A. Wetlands Alteration Approval will expire if work on the development has not commenced within one (1) year of Planning Board date of approval, or is not substantially Where work has commenced within one (1) year of approval, such approval will expire unless work is complete within (2) two years of the original approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant extensions to the approval provided the request is submitted to the Board prior to the expiration of approval.

B. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: January 26, 2015	Title: Various provisions related to Shoreland Zoning
Town code section: Title 16, §16.3.2.17, 16.7.3.5.6 through 16.7.3.6.1, 16.8.28, and 16.2	History: Amended proposal (MDEP conditions) and a new provision entitled 'Adjustment of Common Boundary Line of Nonconforming lots'.

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

- 1) The proposal allows for compliance with the State's Mandatory Shoreland Zoning Act.
- 2) The proposal would simplify the process by which to approve limited adjustments to lot lines of developed, legally nonconforming lots within and outside the Shoreland Overlay zone.

SUMMARY OF PROPOSAL/AMENDMENT:

MDEP Conditions

It became evident while working with Michael Morse of the Maine Department of Environmental Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance with the State's Mandatory Shoreland Zoning Act, specifically to MDEP conditional approvals, orders #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C. The conditions of approval noted in the 1999 and 2010 orders were never fully implemented.

Nonconforming Lots

Section 16.7.3.5.12.A.1 (line 462) would permit the Code Enforcement Officer to approve a simple, equal swap of land when there is no change to the square area of either adjusted legally nonconforming lots.

Section 16.7.3.5.12.A.2 (line 465) would permit the Board of Appeals to approve adjustments to lot lines outside the Shoreland Overlay zone, even if the resulting lot size would be made more non-conforming. This would only apply if the new lots are 20,000 sq. feet or greater (if connected to septic); or 5,000 sq. feet or greater (if connected to town sewer).

Section 16.7.3.5.12.A.3 (line 472) would permit the Planning Board to approve adjustments to lot lines that result in a more non-conforming lot within the Shoreland Overlay zone, if the resulting lots conform as much as is practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland zoning minimum lot standards and shoreline requirements.

Under no circumstances could the resulting lots be smaller than 20,000 sq. feet or have less than 100 feet of shoreline. If the lots currently conform to the minimum standard (30,000 sq. feet or greater, with 150 feet of shoreline) they would have to remain conforming. If both lots currently do not meet MDEP minimum standards, lot lines would not be permitted to be adjusted.

39 JUSTIFICATION:

40

41 MDEP Conditions

42 The Town, per 38 M.R.S.A. SECTION 438-A(4), is obligated to adopt "zoning and land use ordinances
43 that are consistent with or are no less stringent than the minimum guidelines adopted by the
44 {Environmental Protection} Board".

45

46

47 Nonconforming Lots

48

49 This amendment would give the town needed flexibility to approve lot size changes, while protecting
50 the environment within the Shoreland Overlay zone.

51

52 Current law does not permit the Town to make minor lot size adjustments to legally non-conforming
53 developed lots, even if there are good reasons to do so.

54 This amendment is needed to permit lot adjustments that would result in less irregular lot lines and
55 more practical access to utilities or existing structures.

56

57

58 FISCAL IMPACT:

59

60 None

CODE AMENDMENT

Chapter 16.2 DEFINITIONS

16.2.2 Definitions.

Dwelling means a building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight occupancy.

Dwelling unit means a room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

Dwelling unit (in the Shoreland and Resource Protection Overlay Zones) means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term includes mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not dwelling units.

Easement means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

Chapter 16.3 LAND USE ZONE REGULATIONS

Article II. Zone Definitions, Uses, Standards

16.3.2.13 Mixed Use MU.

D. Standards.

1. All development and the use of land in the MU zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

2. Minimum Dimensional Standards.

The following apply:

Minimum lot size:

lots with frontage on Route 1	200,000 square feet
lots without frontage on Route 1	80,000 square feet

Minimum street frontage on road with access along
U.S. Route 1, Haley Road, Lewis Road, or Cutts Road
other streets or approved ways

250 feet
150 feet

Minimum front yard

60 feet

Minimum rear and side yards

30 feet

Maximum building height

40 feet

Maximum height above grade of building-mounted signs

40 feet

Minimum setback from water body and wetland water dependent uses

0 feet

Minimum setback from streams, water bodies and wetlands

in accordance with
Table 16.9, Section 16.3.2.17
and Appendix A, Fee

Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:

dwelling unit with two or more bedrooms	5,000 square feet
dwelling unit with less than two bedrooms	4,000 square feet
residential care unit	2,500 square feet

Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system	2,000 square feet
Buffer to I-95 ROW	40 feet
Buffer to neighboring lot with an existing residence within 100 feet of the lot line	40 feet
Vegetated buffer to be maintained between the MU and R-RL zones	40 feet

NOTE 1: For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000) square feet of land area. A lot of record having a land area of more than two hundred thousand (200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be divided into two lots with a single-family dwelling on each lot provided that each of the lots contains at least forty thousand (40,000) square feet of land area and meets the other dimensional standards of the zone. Sections 16.3.2.1 D.1 and D.2 as set forth in the Residential - Rural zone apply and no further subdivision is allowed.

NOTE 2: ~~For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.~~ For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. If the parking for the residential units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet, except in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.

NOTE 3: For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land within these zones. If the parking for the elderly units is integrated into encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet, except in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.

3. Retail Use Limitation.

Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone.

16.3.2.17 Shoreland Overlay Zone OZ-SL.

D. Standards.

1. Minimum lot standards

a. Minimum lot size by base zone, within the

Residential-Village (R-V) zone	8,000 square feet
Residential-Urban (R-U) zone	20,000 square feet
Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) zones	40,000 square feet
Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) zones	60,000 square feet
Residential-Rural Conservation (R-RLC) zone	80,000 square feet
Business-Park (B-PK) zone	120,000 square feet
Mixed-Use Badgers Island (MU-BI) zone	6,000 square feet
Mixed-Use Kittery Foreside (MU-KF) zone	10,000 square feet

b. Minimum land area per dwelling unit by base zone, within the Residential-Village (R-V) zone

8,000 square feet

Business-Park (B-PK) zone	10,000 square feet
Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) zones	20,000 square feet
Mixed Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) zones	40,000 square feet.
Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet*</u>
* 3,000 square feet for the first two dwelling units	
<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

c. Minimum Shore frontage by base zone per lot and dwelling unit

<u>Mixed Use-Badgers Island (MU-BI)</u>	<u>25 feet</u>
Residential-Village (R-V) and Residential Urban (R-U) zones	
<u>Mixed-Use Kittery Foreside (MU-KF) zones</u>	<u>50 feet</u>
Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	50 feet
Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) zones (shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	100 feet
Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)	250 feet

The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

- i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
- ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.
- iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.
- iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage is 20%.

2. Principal and Accessory Structures – Setbacks and Development.

a. All new principal and accessory structures (except certain patios and decks per Section 16.3.2.17.D.2.b, must be set back as follows:

- i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E., except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking

spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.

ii. The water body, tributary stream, or wetland setback provision does not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor does it apply to other functionally water-dependent uses.

b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.

g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.

Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

i. structure is limited to a maximum of four feet in width;

ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a

wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. §480-C); and

iii. applicant demonstrates that no reasonable access alternative exists on the property.

i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

Article III. Nonconformance (Ordained 9-26-11; Effective 10-27-11)

16.7.3.5.4 Nonconforming Structure Relocation.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, ~~the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.)~~, may require replanting of native vegetation to compensate for the destroyed vegetation is required; and The Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.) may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting ~~will be~~ is required as follows:

16.7.3.5.6 Nonconforming Structure Reconstruction.

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion and 16.7.3.6.1 Nonconforming Structure Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed ~~reconstructed~~ at less than the setback requirement for a new structure. When it is necessary to remove vegetation to replace or reconstruct a structure, vegetation ~~will~~ must be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or~~ destruction, or removal.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

16.7.3.5.7 Nonconforming Use Expansion.

Expansion of a nonconforming use of any structure or land area other than that occupied as such when created is not permitted with the following exceptions:

A. uses in conformity with Chapter 16.7; and

B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17.D.2.

16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.

The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section ~~16.7.3.5.2~~ 16.7.3.6.2.

16.7.3.5.9 Nonconforming Lots of Record. (Ordained 1-23-12; Effective 2-23-12)

A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

16.7.3.5.10 Contiguous Non-Conforming Lots. (Ordained 1-23-12; Effective 2-23-12)

A. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this Title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional requirements of this Title. ~~common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination~~



is deemed to constitute a single lot.

B. Contiguous Built Upon Nonconforming Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record prior to July 13, 1977 and prior to December 15, 1973 for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this Title, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 MRSA §4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.



C. Contiguous Partially Built Upon Lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this Title, if any of these lots do not individually meet the dimensional requirements of this Code or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the applicable dimensional requirements of this Title. If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977 or prior to December 15, 1973 for properties within the Shoreland Overlay Zone;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.4—Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

16.7.3.5.11C. Single Lot Division of a Nonconforming Lot.

If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code.
(Ordained 1-23-12; Effective 2-23-12)

16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.

A. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:

1. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this Code; or

2. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each

resulting lot is as conforming as practicable to the dimensional requirements of this Code; and
a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or
b. each resulting lot is not less than the smallest residential lot permitted under the town's land use base zones, Title 16.3, when served by public sewer; or

3. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and

- a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore frontage^{2,3}; and
- b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and
- c. common boundary lines may not be adjusted when both subject lots are non-conforming per state minimum lot size requirement.³

¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards: adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

² Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint ownership

³ Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required

- A. It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming Lots*) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

16.7.3.5.143 Nonconforming Parking or Loading Space. (Ordained 9-26-11; Effective 10-27-11)

A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND ONLY AMENDED SECTION NUMBER}

16.7.3.5.124 Nonconforming Steps. (Ordained 9-26-11; Effective 10-27-11)

The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size. {MOVED AND ONLY AMENDED SECTION NUMBER}

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones. (Ordained 9-26-11; Effective 10-27-11)

16.7.3.6.1 Nonconforming Structure Expansion.

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A16.7.3.5.4 and Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

16.7.3.6.2 Nonconforming Use Change.

An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

Article XXVIII. Single and Duplex Family Dwellings

16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay Zones.

In addition to the criteria specified in Section 16.6.6 and 17.10.8.3.4, applicable to the granting of a special exception use request, the Planning Board may approve an application for a single or duplex family dwelling special exception use request, where applicable, provided the applicant demonstrates all of the following conditions are met:

A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where a single family dwelling the structure can be built, or similarly for a duplex in the Shoreland Overlay zone.

B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATT. A

WIGGUS S. KING JR.

BOOTHBAY

December 29, 1999

MARTHA KIRKPATRICK
COMMISSIONER

David Schmidt, ATCP
Town Planner
Town of Kittery
P.O. Box 808
Kittery, Maine 03904

Subject: CONDITIONAL APPROVAL of Kittery Shoreland Zoning
Provisions (File #5-99)

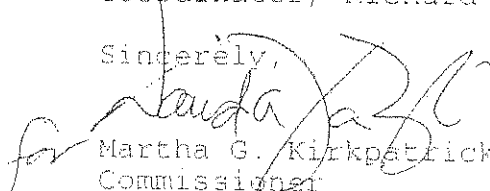
Dear Mr. Schmidt:

Please find enclosed a copy of Department Order # 5-99 conditionally approving the amended Shoreland Zoning Ordinance for the town of Kittery, as amended on December 29, 1997 and March 18, 1998. The conditions of approval are binding on the Town and must be administered as part of the municipal ordinance. Should the ordinance be amended in the future to address the issues identified in the conditions, the Department can then fully approve the ordinance and repeal the conditions of approval.

The Department recognizes that the Town may wish to continue its discussions regarding the applicable frontage and lot size standards in the districts affected by this Order of Conditional Approval. The Department staff will be available to the town officials for such discussions. If the Town is able to persuade the Department that its current standards are appropriate, the Order of Conditional Approval can be modified at that time. However, due to the statutory 45 day period within which the Department must issue its decision regarding the ordinance amendments, this Order of Conditional Approval must be issued at this time.

Should you, or the other town officials, have any questions, please contact the Department's Shoreland Zoning Coordinator, Richard Baker, at 287-7730.

Sincerely,


Martha G. Kirkpatrick
Commissioner

enclosed: Department Order #5-99

cc: Phil McCarthy, Town Manager
Kittery Town Council
Kittery Planning Board
David VanWie, Director- Bureau of Land and Water Quality

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04401-0000
RAY BELL, HANOVER, ME

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BANGOR, MAINE 04401
207/941-4111 FAX: 207/941-4111

PORTLAND
12 CANOE ROAD
PORTLAND, MAINE 04103
207/526-6101 FAX: 207/526-6101

PRESQUE ISLE
111 CENTRAL DRIVE, SKYWAY 100
PRESQUE ISLE, MAINE 04960
207/764-6477 FAX: 207/764-6477



STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, MAINE
04333

ANGUS S. KING JR.

Governor

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
APPROVAL WITH CONDITIONS

Pursuant to the provisions of 38 M.R.S.A. sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective February 6, 1999, the Department of Environmental Protection has considered the provisions of the Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town Council on December 29, 1997 and March 18, 1998, and fully received by the Department on November 16, 1999. The Department FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act requires the municipality of Kittery to establish zoning controls in areas within 250 feet of the normal high-water line of rivers and tidal waters; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board), unless special local circumstances justify deviation from those Guidelines.
2. Before a local shoreland zoning ordinance or any amendment thereto, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (Commissioner). The Commissioner may approve, approve with conditions, or disapprove a locally adopted ordinance. If a locally adopted ordinance is disapproved, or approved with conditions, such action must be preceded by notice to the municipality.
3. The Department's review of the Kittery ordinance amendments of December 29, 1997 and March 18, 1998 revealed the following deficiencies:
 - A. The Kittery ordinance fails to establish adequate minimum lot size, minimum lot area per dwelling unit, and minimum shore frontage requirements for the Badger Island urban and Kittery Foreside districts. The current pattern of development in the shoreland areas of those districts does not justify the town-adopted standards. The minimum lot size and the lot area per dwelling unit in the Badger Island urban district should be at least 7,000 square feet. In the Kittery Foreside district, the required lot area per dwelling unit should be at least 10,000 square feet. The shore frontage requirement per lot in both districts should be at least 50 feet. The same frontage requirement per dwelling unit should be required.

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
APPROVAL WITH CONDITIONS

- B. In the shoreland zone within the Mixed-use district the maximum lot coverage standard and the lot size standard per residential dwelling unit are inadequate. To be consistent with the shoreland zoning requirements the maximum lot coverage allowance must be 20% or less, and the lot size per dwelling unit must be no less than 40,000 square feet.
 - C. The standards for minimum lot size and minimum lot area per dwelling unit in the Village Residence district are less than justified by the current development patterns. The minimum lot size and minimum area per dwelling unit should be at least 8000 square feet.
 - D. There is no established shore frontage requirement in any shoreland district for public and private recreation facilities. The shore frontage requirement must be at least as great as that for a residential structure in the respective district.
4. In a letter dated December 15, 1999 the Town of Kittery was notified by the Commissioner that the Department was proposing to approve the Kittery ordinance with conditions. A copy of the proposed Order was included with that notification.

BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The Town of Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town on December 29, 1997 and March 18, 1998 contains several deficiencies relating to minimum lot size, lot size per dwelling, lot coverage and shore frontage standards. The deficiencies can be alleviated by the Commissioner establishing standards consistent with the Department's Guidelines, or consistent with the current pattern of development where the pattern of development is inconsistent with those Guidelines.

THEREFORE, the Department approves the amendments to the Town of Kittery Land Use and Development Code Zoning Ordinance, adopted by the Town on December 29, 1997 and March 18, 1998, SUBJECT TO THE FOLLOWING CONDITIONS:

1. Within the shoreland zone in the Badger Island urban and the Kittery Foreside districts the minimum shore frontage requirement shall be 50 feet per lot. Also, at least 50 feet of shore frontage shall be required for each dwelling unit.

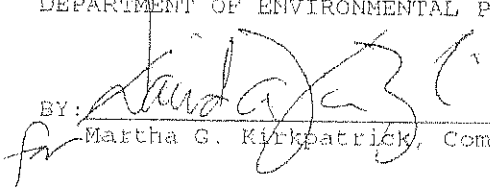
TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99

MANDATORY SHORELAND ZONING ACT
18 M.R.S.A. SECTION 438-A(3)
APPROVAL WITH CONDITIONS

2. In the Badger Island urban district, the minimum lot size standard shall be 7000 square feet. Also, for each dwelling unit within the District, 7000 square feet of lot area shall be required.
3. In the shoreland zone of the Kittery Foreside district the minimum lot size per dwelling unit shall be 10,000 square feet.
4. In the shoreland zone within the Mixed-use district, the maximum lot coverage shall be 20% and the minimum lot size per dwelling shall be 40,000 square feet, consistent with the Department's Guidelines.
5. In the Village Residence district, the minimum lot size and minimum lot area per dwelling unit shall be 8000 square feet.
6. The minimum shore frontage requirement for public and private recreational facilities shall be the same as that for residential development in the respective district.

DONE AND DATED AT AUGUSTA, MAINE, THIS 29 DAY OF DECEMBER, 1999.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
for Martha G. Kirkpatrick, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATT. B

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

September 2, 2010

Gerry Mylroie, AICP
Town Planner
Town of Kittery
200 Rogers Road
Kittery, Maine 03904

Subject: CONDITIONAL APPROVAL #23-10,
Shoreland Zoning Ordinance Amendments

Dear Mr. Mylroie,

Please find enclosed a copy of Department Order #23-10 conditionally approving the Town of Kittery Land Use and Development Code, as adopted on May 24, 2010. The conditions of approval are binding on the Town and must be administered as part of the municipal ordinance. Should the Ordinance be amended in the future to address the issues identified in the conditions, the Department can then fully approve the Ordinance and repeal the conditions of approval.

Thank you and the other municipal officials for your significant effort in adopting the nearly-compliant ordinance. Should you or the other Town officials have any questions, please contact me at 822-6328.

Sincerely

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality

enclosed: Department Order #23-10

cc: Jonathan Carter, Town Manager
Heather Ross, CEO
Planning Board
file

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PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY) MANDATORY SHORELAND ZONING ACT
YORK COUNTY) 38 M.R.S.A., SECTION 438-A(3)
LAND USE AND DEVELOPMENT CODE)	
ORDER #23-10) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.S.R.A., Section 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective March 24, 1990, and amended through May 1, 2006, the Department of Environmental Protection has considered the shoreland zoning provisions within the Land Use and Development Code for the Town of KITTERY, as adopted on May 24, 2010, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires the Town of Kittery to establish zoning controls in areas within 250 feet of the normal high water line of great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams and tributary streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, (Guidelines) as adopted by the Board of Environmental Protection (Board).
2. The Act specifies that before a locally adopted shoreland zoning ordinance or map, or amendments to that ordinance or map, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (Department). The Department may approve, approve with conditions, or deny a locally adopted ordinance or map. If denied, or approved with conditions, such action must be preceded by notice to the municipality.
3. On July 20, 2010, the Town of Kittery submitted a copy of the Land Use and Development Code (Ordinance) as adopted on May 24, 2010, to the Department for review. The Ordinance includes numerous changes that affect shoreland zoning application. These changes were made in order to update the Town's Ordinance in an effort to make it consistent with the May 1, 2006 Guidelines.
4. The Department review of the Land Use and Development Code of the Town of Kittery revealed the following significant deficiencies:
 - A. Section 16.2.2, Definitions, fails to define the term "dwelling unit" consistent with the minimum Guidelines.
 - B. Section 16.3.2.13.D.Note 2 and Note 3 of the Ordinance do not incorporate the minimum lot size requirements of Department Order #5-99, and further departs from the minimum requirements when parking is integrated into the building.

TOWN OF KITTERY
YORK COUNTY
LAND USE AND DEVELOPMENT CODE
ORDER #23-10

2 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
)
) CONDITIONAL APPROVAL

- C. The Ordinance lacks a provision requiring that the minimum lot dimensional requirements be met for each dwelling unit, principal structure, or use, on a parcel of land within the shoreland zone.
 - D. Section 16.7.3.5.1.B and Section 16.7.3.5.1.C of the Ordinance contain incorrect references related to non-conforming structure requirements.
 - E. Section 16.7.3.5.5 of the Ordinance is highly inconsistent with the State minimum requirements regarding the reconstruction or replacement of non-conforming structures.
 - F. The Ordinance provisions for non-conforming lots are largely deficient as they relate to the Resource Protection and Shoreland Overlay zones.
 - G. Article XXVIII and Section 16.8.28.1 of the Ordinance are inconsistent with the State minimum requirements as it allows for more than one single family dwelling to be considered under the special exception provision within the Resource Protection Overlay zone.
5. In a letter dated August 25, 2010, the Town of Kittery was notified by the Department about the deficiencies described in Finding 4.

Based on the above Findings of Fact, the Department makes the following CONCLUSIONS:

- 1. The Land Use and Development Code for the Town of Kittery, as amended on May 24, 2010, is substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R.A., Section 438-A, EXCEPT FOR the deficiencies described in Finding 4.
- 2. The Department can correct the deficiencies described in Finding 4 by approving the Kittery Ordinance with the condition that the Ordinance be changed to reflect the requirements described in Finding 4.

THEREFORE, the Department APPROVES the Land Use and Development Code for the Town of Kittery as adopted on May 24, 2010, WITH THE FOLLOWING CONDITIONS:

- 1. Section 16.2.2, Definitions, shall be amended to include the following:
 - "Dwelling Unit (in the Shoreland and Resource Protection Overlay Zones)**
means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units."

TOWN OF KITTERY
YORK COUNTY
LAND USE AND DEVELOPMENT CODE
ORDER #23-10

3 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
)
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2. Section 16.3.2.13.D.Note 2 and Note 3 shall be amended to read as follows:
 “Note 2: For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and Shoreland Overlay zones, if the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.

 “Note 3: For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and Shoreland Overlay zones, if the parking for the elderly units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.”
3. Section 16.3.2.17.D.2.i shall be incorporated into the Town of Kittery Land Use and Development Code and shall be as follows:

 “If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.”
4. Section 16.7.3.5.1.B and Section 16.7.3.5.1.C of the Ordinance shall be amended in part with the following correct Ordinance references:

 “B. If a replacement structure conforms to the requirements of Section 16.7.3.5.5 and is less than the”

 and,
 “C. Whenever a new, enlarged, or replacement foundation...expansion in conformity with Section 16.7.3.5.1, above, and the foundation does not cause...”
5. The text in Section 16.7.3.5.5 of the Town of Kittery Land Use and Development Ordinance shall be deleted in its entirety and replaced with the following provision:

 “Non-conforming Structure Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the

TOWN OF KITTERY
YORK COUNTY
LAND USE AND DEVELOPMENT CODE)
ORDER #23-10

4 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
)
) CONDITIONAL APPROVAL

water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(2) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(2) above, the physical condition and type of foundation present, if any."

6. Section 16.7.3.5.11 shall be incorporated into the Town of Kittery Land Use and Development Code as follows:

"A. Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

B. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

TOWN OF KITTERY
YORK COUNTY
LAND USE AND DEVELOPMENT CODE
ORDER #23-10

5 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
)
) CONDITIONAL APPROVAL

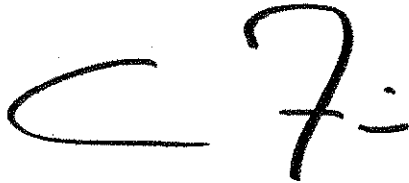
This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on July 13, 1977, and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area."

7. Article XXVIII and Section 16.8.28.1 of the Town of Kittery Land Use and Development Code shall be amended to prohibit the granting of a special exception permit for a duplex within the Resource Protection Overlay zone. This Article and Section shall only apply to a single family dwelling on a parcel of land within this zone.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date, 2010.09.02 09:34:24 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATT. C

ANGUS S. KING, JR.
GOVERNOR

MARTHA KIRKPATRICK
COMMISSIONER

August 7, 2000

David A. Schmidt
Town Planner
Kittery Town Hall
P.O. Box 808
Kittery, Maine 03904-0808

Re: Modification of Conditional Approval of Kittery Shoreland Zoning Standards

Dear David:

Attached is a copy of the approved modification to the Department's conditional approval of the Kittery shoreland zoning standards. This Order modifies Conditional Approval #5-99 by repealing certain limitations pertaining to Badger Island. The Order is consistent with our earlier discussions, and was drafted after receiving Beth Della Valle's assessment of the Town's comprehensive plan update.

If you have questions relating to the modified order, you may reach me at 287-7730.

Sincerely,

Richard P. Baker
Shoreland Zoning Coordinator

Cc: Beth Della Valle, SPO
Philip O. McCarthy, Town Manager
Planning Board
Sig Albert, CEO

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY 1
PRESQUE ISLE, MAINE 04769-2000
(207) 764-0477 FAX: (207) 764-1501



STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, MAINE
04333

ANGUS S. KING, JR.
GOVERNOR

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99-A

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
MODIFICATION OF CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S.A. sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective February 13, 2000, the Department of Environmental Protection has considered the provisions of the Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town Council on December 29, 1997 and March 18, 1998, and received by the Department on November 16, 1999. The Department FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act requires the municipality of Kittery to establish zoning controls in areas within 250 feet of the normal high-water line of rivers and tidal waters; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board), unless special local circumstances justify deviation from those Guidelines.
2. Before a local shoreland zoning ordinance or any amendment, thereto, is effective it must be approved by the Commissioner of the Department of Environmental Protection (Commissioner). The Commissioner may approve, approve with conditions, or disapprove a locally adopted ordinance. If a locally adopted ordinance is disapproved, or approved with conditions, such action must be preceded by notice to the municipality.
3. On December 29, 1999 the Commissioner approved the Kittery ordinance amendments of December 29, 1997 and March 18, 1998 subject to the following conditions:
 - a. Within the shoreland zone in the Badger Island urban and the Kittery Foreside districts the minimum shore frontage requirement shall be 50 feet per lot. Also, at least 50 feet of shore frontage shall be required for each dwelling unit.



TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99-A

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
MODIFICATION OF CONDITIONAL APPROVAL

- b. In the Badger Island urban district, the minimum lot size standard shall be 7000 square feet. Also, for each dwelling unit within the District, 7000 square feet of lot area shall be required.
 - c. In the shoreland zone of the Kittery Foreside district the minimum lot size per dwelling unit shall be 10,000 square feet.
 - d. In the shoreland zone within the Mixed-use district, the maximum lot coverage shall be 20% and the minimum lot size per dwelling shall be 40,000 square feet, consistent with the Department's Guidelines.
 - e. In the Village Residence district, the minimum lot size and minimum lot area per dwelling unit shall be 8000 square feet.
 - f. The minimum shore frontage requirement for public and private recreational facilities shall be the same as that for residential development in the respective district.
4. Subsequent to the conditional approval of the Kittery Land Use and Development Code Zoning Ordinance amendments of December 29, 1997 and March 18, 1999, the town of Kittery provided information, including comprehensive planning documents, to the Department and to the State Planning Office's Community Planning and Investment Program for review. The manager of the Community Planning and Investment Program, upon review of Town's 1999 Update of the Kittery Comprehensive Plan, concluded that Kittery's approach to managing development on Badger Island is consistent with the Comprehensive Planning and Land Use Regulation Act (the Act). She notes that the City's encouragement of an extension of the compact pattern of development that already exists in the nearby mainland area, as an alternative to development in less highly developed, unserved, rural areas of the community, is precisely the type of strategy the State Planning Office sees as meeting the first goal of the Act. The State Planning Office does not view Kittery's approach as unreasonably affecting water quality, critical natural areas, or marine resources. Furthermore, the town has made efforts to preserve marine access and support for commercial and recreational boaters.

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99-A

MANDATORY SHORELAND ZONING ACT
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MODIFICATION OF CONDITIONAL APPROVAL

5. Badger Island is in close proximity to industrial and commercial facilities, both within the town of Kittery and the neighboring city of Portsmouth. It is serviced by town sewer and water lines. The Portsmouth Naval Shipyard is visible less than a mile from Badger Island.

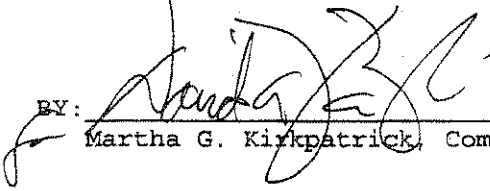
BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The town of Kittery has documented satisfactorily that its development standards for Badger Island, as contained in the Kittery Land Use and Development Code Zoning Ordinance, last amended on March 18, 1998, are consistent with its comprehensive plan. Furthermore, the town's plan for the island is consistent with the Comprehensive Planning and Land Use Regulation Act. Although the Town's shoreland standards for Badger Island are less restrictive than those in the Department's *State of Maine Guidelines for Municipal Shoreland zoning Ordinances*, the Town's regulatory scheme on a town-wide basis (including the Department's December 29, 1999 conditional approval of the Ordinance- #5-99) is sufficient for the Department to recind that portion of Conditional Approval # 5-99 that pertains to Badger Island.

THEREFORE, the Department modifies Conditional Approval # 5-99 as it pertains to Badger Island. Conditions specific to the Badger Island urban district, as contained in paragraphs 1 and 2 of the December 29, 1999 Conditional Approval are hereby repealed. All other conditions contained in that December 29 Conditional Approval, including those that pertain to other districts such as the Kittery Foreside, Mixed-use, and Village Residenc districts, shall remain in effect.

DONE AND DATED AT AUGUSTA, MAINE, THIS 4 DAY OF AUGUST, 2000.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Martha G. Kirkpatrick, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Chris DiMatteo

From: Morse, Michael J <Michael.J.Morse@maine.gov>
Sent: Wednesday, January 21, 2015 9:06 AM
To: Chris DiMatteo
Subject: RE: Shoreland Revisions and clarifications

Hello Chris. Your summary seems to accurately represent our discussions and correspondence around these issues.

With regard to your third bullet about home occupations and the definition of a residential dwelling unit, the intent of the word "exclusively" is intended to be strictly interpreted/applied and we can appreciate the concern of a conflict related to allowing home occupations within a dwelling unit. However, the DEP's intent has always been to allow home occupations within residential dwelling units and I am not aware of any legal challenges to this position, particularly based on the use of the word "exclusively" within the definition. Should the town's legal counsel opinion be that the residential dwelling unit definition should be clarified to more clearly allow home occupations then we could likely approve such an amendment (although we'd certainly appreciate reviewing draft language prior to Town adoption).

Thanks,
Mike

*Mike Morse
MDEP
Assistant Shoreland Zoning Coordinator
312 Canco Road
Portland, Maine
Ph- 207-822-6328
Fax- 207-822-6303*

From: Chris DiMatteo [mailto:CDiMatteo@kitteryme.org]
Sent: Tuesday, January 20, 2015 10:58 AM
To: Morse, Michael J
Subject: Shoreland Revisions and clarifications

Hi Mike,

Thanks for your time on the phone last Friday.
I thought I follow-up in an email and make sure I correctly understood your comments.

- 1) *16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.*
C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section ~~16.7.3.5.2~~ 16.7.3.6.2.
The question asked about the above provision had to do with whether or not Commercial Fisheries / Maritime Uses Overlay Zone (CFMU) should be referenced alongside the other overlay zones. You stated that as it reads now, nonconforming use cannot be changed to another nonconforming use in the CFMU.
You suggested that perhaps the Town wanted this way rather than an oversight. In either case the State would not have an issue including CFMU or leaving it as is.
- 2) Under the nonconforming lots provision, 16.7.3.5.10, there was a question regarding the use of "single or joint" rather than "common" when referring to ownership. You explained that the MDEP has used this language for a

KITTERY PORT AUTHORITY SELF-ASSESSMENT

In September the Town Council requested that the Kittery Port Authority conduct a self-assessment. Since September, the KPA has experienced many changes. Two members have resigned, a third member did not seek reappointment, and a new Harbormaster was hired. With three members leaving it has been difficult to move forward. The remaining members felt it was best to wait for new members before making any significant changes.

We have held three workshops on self-assessment since September. The first workshop focused on whether Kittery boaters and taxpayers would be better served if the KPA transferred to a town board, over remaining a state board. The result of that workshop was the remaining members, as well as the new Planning Board representative, felt there are significant reasons why it is in the best interest of Kittery boaters and taxpayers that the KPA remain in the State Statute.

Since 1961 the Kittery Port Authority has been a state mandated, Town appointed Authority working as a Town board. The State of Maine moved to establish the Kittery Port Authority so that the state, as well as the Town of Kittery, would be prepared should commercial, shipping or passenger traffic develop on the Maine side of the Piscataqua River. Thus far Kittery has not had any commercial, shipping or passenger related traffic development. However, the potential does exist. Looking ahead, if the Portsmouth Naval Shipyard should close or open any of their areas to non-government, private activities, these types of developments may likely become a reality. In very recent history the Department of Defense has attempted to lease the Naval Prison to private development. In the event that the Ship Yard should ever close or a private company should ever lease any part of the Shipyard, Kittery, through State Statute, will be set up to regulate any type of marine activity. Moving out of a state board may be fairly easy, but trying to get back into a state board could be very involved.

Kittery is in a very unique situation because we are the first Maine Port. We are also a stone's throw from the State of New Hampshire, which is controlled by the New Hampshire Port Authority. We share a busy river that has many import and export opportunities with the state of New Hampshire, the Portsmouth Naval Shipyard and the United States Coast Guard. A state board gives the Harbormaster, as well as the Town, a higher level of authority when working with the Coast Guard, Maine and New Hampshire Marine Patrol and other federal and state officials. Simply put, by being a state appointed Authority places our Harbormaster and the Town on a level playing field with our neighbors on the other side of the river. If we were to remove ourselves from that, we would essentially become a mall cop.

Our second workshop focused on writing by-laws and planning and identifying areas that needed to be worked on. The third workshop was entirely focused on reviewing the bylaws and making comments and corrections. The bylaws are on the January 7 KPA agenda for adoption.

The Kittery Port Authority is charged with maintaining and running three town facilities, two boat ramps, hiring and overseeing the Harbormaster and his assistants, purchasing and maintaining the Harbormaster boats as well as reviewing and approving all building and repair of structures below the mean high water line. The KPA sets and charges fees in an effort to offset associated costs and not rely on taxpayer monies to support the operation of the Authority. This is a huge responsibility and has proven to be a very difficult job for one person to manage. Moving forward, the KPA is committed to spreading out the workload. We acknowledge that in order for the KPA to be

productive, all seven members need to take an active role in the workload. Showing up one Thursday each month to cast a vote cannot continue.

We are respectfully requesting the Town of Kittery take the work we have started and allow the KPA to continue on as a state appointed board. We feel that Kittery can maintain the state statute it may someday need, and work cooperatively with the Town. We acknowledge that mistakes have been made, and there is a great deal of work to be done. We are requesting the Town Council give the KPA two years to prove itself. In the first year we hope to reorganize, review, and support our new Harbormaster. During the second year we will assess changes made and continue support of the Harbormaster. During this two year period we are willing to appear before the Council either monthly or quarterly to report on our progress. If, after the first or second year the Council feels the KPA is not moving forward, then we can move forward with reorganizing the Port Authority.

Kelly Philbrook
Chair, Kittery Port Authority
January, 2015



KITTERY PORT AUTHORITY BY - LAWS

Article I- Name

The name of this board shall be the “Kittery Port Authority,” hereinafter referred to as the “KPA”. Members of the KPA serve without compensation.

Mission Statement:

The KPA mission is to provide law enforcement, safety, rescue, and education services to the boaters within the tidal waters of Kittery Maine. The KPA is dedicated to delivering these services to the boating community with courtesy and professionalism. Our goal is to foster a safe boating environment by maintaining a high state of readiness and cultivating partnerships with fishermen, recreational boat owners, marina owners, and other marine law enforcement agencies on the Piscataqua River in order to make Kittery the safest boating waters in all of Maine.

Article II – Enabling Legislation and Authority

Section 1. Section four (4) Chapter 163 Private and Special Laws 1961, 100th Legislature of the State of Maine, HP 682 (Legislature Document No. 960) Title 38 M.R.S.A. as amended.

Section 2. Town Charter IX.

Article III- Purpose

Section 1. The KPA in cooperation with other planning and development boards in the Town of Kittery Shall:

A. Plan for maintenance and development of the port, harbor and navigable waters within the jurisdiction of the Town of Kittery in order to foster and stimulate commercial and recreational use of these areas.

B. Aid in the development of saltwater fisheries and associate industry; ship and boat building, repair and storage and associated industries; pleasure boating, swimming and other associated recreational uses of these areas and facilities.

C. Be authorized and empowered to appoint and compensate a harbor master, who will enforce the directives of the authority, manage mooring fields and sites, the assignments of anchorage areas and the movement of traffic, and the use of municipally owned wharves, docks, piers and landings.

Section 2. The KPA shall have and shall exercise the powers as authorized by Maine State Statute and additionally the Kittery Town Charter and local Ordinance.

Article IV – Membership

Section 1.

1. The Port Authority consists of seven (7) members, who are Kittery residents serving staggered terms of office of five years, including one (1) appointed representative from the Kittery Planning Board.
2. Members of the Port Authority are appointed by the Town Council. Vacancies are filled by Town Council appointment for the unexpired term.
3. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
4. Members serve until their successors are appointed and qualified.
5. No member shall serve more than 2 consecutive terms of 5 years. Any member who has served 2 consecutive terms of 5 years is ineligible to serve on the Board for a period of 1 year. Computation of term limits commences with the first term of 5 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 5 years after the effective date.
6. A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

Section 2. The Procedure for filling vacancies on the KPA:

- A. A pool of applicants will be maintained by the Town Clerk. Applicants will be listed in order of precedence set by the date of receipt of a completed application by the Town Clerk.
- B. A member whose term is expiring is given consideration for reappointment first.
- C. Pool applicants will be polled for interest for an interview when an opening occurs in order of listing precedence. Those refusing may opt to remain on the list and will be placed back on the list as of date of refusal.
- D. The interview is conducted by the Chairperson (or designated permanent member) of the KPA and by one Town Council member.
- E. Interviews are considered private. Only one interview is conducted with each applicant.
- F. Both interviewers must agree to the acceptability of the candidate in order for that candidate's name to be considered by the Town Council.
- G. The following criteria are used in evaluating candidates:
 - 1. Education
 - 2. Training and experience
 - 3. Related marine experience
 - 4. Any potential for conflict of interest
 - 5. Preference or priority will be given to applicants who are not serving on any other board.

Article V – Officers and Duties

Section 1. At the first regularly scheduled meeting in each fiscal calendar year, the Port Authority shall elect a Chair, Vice-Chair, and Secretary, from its regular members for the ensuing year.

Section 2. Duties of Officers

Chair

- 1. The Chair shall assume the chair at the time appointed for the meeting; call the members to order; provide for introductory and pledge of allegiance; cause the roll to be called; and, a quorum

being present, proceed to conduct the business of the Port Authority according to the published agenda.

2. The Chair shall preserve decorum and order; speak to points of order in preference to other members; and, decide all questions of order subject to an appeal to the Authority by motion regularly made and seconded, and no other business is in order until the question on appeal is decided.

3. The Chair enjoys the same rights and privileges as other members of the Port Authority, including the introduction and seconding of motions and participation in debate.

4. The Chair may appoint KPA members to Sub-Committees. Sub-Committees shall report findings and conclusions to the KPA, which shall have the authority to accept, reject, amend, or modify the report by majority consent.

Vice Chair:

The Vice-Chair, in the temporary absence of the Chair, will assume all the responsibilities of the Kittery Port Authority Chair.

Secretary:

It is the duty of the Secretary to preside at meetings of the KPA in the event that both the Chair and Vice Chair are absent, and assist the Chair and Vice Chair in the preparation of KPA materials for review and discussion, take and provide minutes of site walks and special meetings and workshops.

Section 3. An officer of the KPA may be removed from the office for cause by two-thirds (2/3) majority of the members voting, with an election to be held at the next regularly scheduled meeting to fill the vacant office.

Article VI - Regular Meetings

Section 1. The regular meetings of the Port Authority are held in the Council Chambers of Town Hall

on the first Thursday of each calendar month. Public proceedings commence at 6:00 p.m. whether or not preceded by an executive session or workshop.

Section 2. The date and venue of any regular meeting may be changed upon the vote of the Port Authority, provided, however, that said change in date, or venue, will still provide for at least one regular meeting in each month.

Section 3. Minutes of all meetings and workshops must be recorded. Said minutes must be reviewed, corrected and approved by the Board at the first meeting following.

Section 4. All meetings shall be open to the public, and all in attendance are entitled to make written, taped, or filmed records provided such actions do not interfere with the orderly conduct of the meeting (Title 1 MRSA Section 404)

Section 5. During a public hearing, any person in attendance at the meeting wishing to address the Authority on an item, must so signify by raising a hand and, when recognized by the Chairman, may request permission to address the Authority, stating their name, address and the subject matter on which they desire to address.

Section 6. At any time during a meeting, the Chair may invite further public comment. The Chair, with consent of the members present, may set reasonable time limits on members of the public choosing to address the Authority.

Section 7. It shall be the policy of the KPA to carry out its functions in a fair and impartial manner without regard to race, creed, national origin, ethnic background, sex, handicap, and or social or community standing of any person.

Section 8. All decisions by the KPA will be made as expeditiously as possible after careful consideration and due deliberation. The interests of all individuals, groups of individuals, and/or organizations using the harbor and its water-related facilities will be considered equally.

VII - Meeting Rules

Section 1. Except as superseded by these bylaws, Robert's Rules of Order, as may be revised, governs the conduct of meetings.

Section 2. A majority of members (4-7) constitutes a quorum for the transaction of business. No meeting may be held without a quorum of four members present.

Section 3. Four (4) affirmative votes are required for the passage of a resolution or motion.

Section 4. No member of the KPA may request a legal opinion relative to Town business from the Town's appointed attorney(s) without prior approval of a majority vote of the KPA. All such requests must be made through the Town Manager.

Section 5. Agenda deadline seven (7) days preceding the scheduled meeting date. Public notice for a meeting must be made a minimum of seven (7) days prior to the scheduled meeting.

Article VIII – Special Meetings

Section 1. Special meetings may be called by the Chair or by four members of the KPA. Notice of special meetings must, when possible, be given at least twelve hours before the time for holding the meeting. The call for the meeting must set forth the matters to be acted upon and nothing else may be considered.

Section 2. Special meetings are open to the public and shall include public comment time as provided at regular meetings, but such public comment is limited to the matters on the agenda for the meeting. Notices of special meetings must include the name(s) of the person(s) requesting the meeting.

Section 3. Special meetings must be publicly noticed once scheduled.

Article IX – Workshops

Section 1. Workshops may be convened at the discretion of the KPA, by majority vote.

Section 2. The Town Clerk shall be notified of workshop dates by the Chair (or designee) as soon as the date is set.

Section 3. All workshops shall be open to the public, and noticed as a regular meeting.

Article X. - Executive Session

Section 1. Executive sessions may be held only in accordance with Title 1 MRSA Section 103.

Section 2. Consistent with the Maine Right to Know Law (1 M.R.S. §401-410), a motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory authority that permits an executive session for that business, and that final action not be taken by the Authority except in a regular session.

Article XI – Conflict of Interest

Section 1. No member of the KPA shall vote on any question in which he or she has a pecuniary interest, directly or indirectly, except Kittery moorings in general.

Section 2. Any member of the KPA shall disclose any direct or indirect pecuniary interest in any issue before the KPA. Following disclosure, KPA members will determine, by vote, whether the member should abstain in discussion and voting on same.

Section 3. Any disclosed pecuniary interest by any member of the KPA is to be recorded in the minutes of the meeting, along with any ~~special~~ action taken by the KPA in that regard.

Article XII - Ex Parte Communication

Section 1. Discussion between KPA members about KPA business outside a public meeting should not occur, whether or not a majority of the board is involved, and whether or not the discussion occurs by phone, by email, or after the board meeting is adjourned. During a site visit, the individual board members have an obligation not to discuss substantive issues about the site or the application either with each other or with the applicant. Such discussions would constitute illegal *ex parte* communications and would cause due process problems for the parties not present.

Article XIII – Appeals

Section 1. See Section VII. Appeals of the Kittery Port Authority Rules and Regulations.

Article XIVIII – Amendments

Section 1. These By-Laws may be amended at any regular meeting of the KPA.

Section 2. Amendments may be made in conformance with Article VII - Meeting Rules.

Article XV – Adoption and Revision

Section 1. These By-Laws shall be reviewed at a minimum of every five (5) years.

Section 2. These By-Laws shall be adopted annually.

TOWN COUNCIL ORDER TO SCHEDULE A HEARING RE
DANGEROUS BUILDING AT 40 OLD POST ROAD

WHEREAS, it appears that that the building located on that certain lot or parcel of land, located on the generally southeasterly side of the Old Post Road, adjacent to the Legion Pond, and shown as Lot 25 on current Town Tax Map 8 with a street address of 40 Old Post Road (the "40 Old Post Road Building"), is structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for any use or occupancy; constitutes a hazard to health and safety because of inadequate maintenance, dilapidation and abandonment; and is otherwise dangerous to life or property by virtue of such lack of maintenance and repair, such that if any person should enter the building, they would be in immediate danger of serious bodily injury, based on the same; and

WHEREAS, the structural integrity of the building appears to be irreparably compromised, such that the building can no longer feasibly be repaired, or even boarded up, so as to reasonably abate the danger of collapse, and the state of general disrepair and apparently flammable junk both inside and around the exterior of the building make it a serious fire hazard, with inhabited residences adjacent to it; and

WHEREAS, these conditions create the apprehension among the members of the Town Council that this structure is so badly deteriorated that it raises the imminent danger of collapse and/or fire hazard, which in either event would present an unacceptable risk of serious bodily injury to any public safety rescue crews called to attend to the same; and

WHEREAS, by State statute, 17 M.R.S.A. Sec. 2851, the Town Council acting as the Kittery Municipal Officers may, after notice and hearing to the owner(s) and any others having a legal interest therein, declare the building to be so unsafe and such a risk to the public that it must be razed if the facts adduced at such a public hearing prove the above concerns to be true;

NOW, THEREFORE, be it ORDERED that a hearing be set before the Town Council, acting under law as the Municipal Officers for the Town of Kittery, to be held on Monday, March 9, 2015 at 7 pm (or as soon after the 7 pm start time as practical) at the Town Council Chambers, 200 Rogers Road in Kittery, to hear all interested persons on the same to determine if the building is a "dangerous building" within the meaning of the applicable State statute, 17 M.R.S.A. Sec. 2851; and

Be it further ORDERED, that the Town Clerk cause notice of such hearing to be served on the owner(s) of the real property, as reflected in the instruments of record at the York County Registry of Deeds, and as may otherwise be known to any Town code enforcement officials (copy of notice attached), and that the Town Clerk cause a public notice of the same to be published weekly in the Portsmouth Herald newspaper, once a week for three consecutive weeks in advance of such hearing, to provide notice to any and all persons who may have an interest in the 40 Old Post Road Building.

Dated: January 26, 2015